

REMARKS/ARGUMENTS

The December 19, 2003 Official Action has been carefully considered. In view of the amendments submitted herewith and the following remarks, favorable reconsideration and allowance of this application are respectfully requested.

Status of claims and prosecution:

Claims 16-24, 30 and 31 are pending in the application. Claims 16-24 and 30 stand rejected under the judicially-created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-3, 5, 7-8 and 12-18 of U.S. Patent No. 6,071,742. Claims 16-24, 30 and 31 stand rejected under the judicially-created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1-19, 22 and 25-30 of U.S. Patent No. 6,323,024.

The examiner has noted that commonly assigned U.S. Patent Nos. 6,071,742 and 6,323,024 would form the basis for a rejection of claims 16-24, 30 and 31 under 35 U.S.C. §103(a) if the commonly assigned patents qualify as prior art under 35 U.S.C. §102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in the instant application was made. To resolve the issue, the assignee has been required under 35 U.S.C. §103(c) and 37 C.F.R. §1.78(c) to either show that the conflicting inventions were either commonly owned at the time the invention in this application was made, or to name the prior inventor of the conflicting subject matter.

Claims 21 and 22 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite for lack of antecedent basis of the term "the transcription regulatory region" in claim 21.

Claim 21 is amended herein. No new matter has been added. It is believed that the present application is in condition for allowance, for the reasons set forth below.

The prior patents and the invention of this application were commonly owned at the time the invention was made, and are currently commonly owned, and Terminal Disclaimers are submitted herewith.

All claims stand rejected under the judicially-created doctrine of obviousness-type double patenting over certain claims of U.S. Patent Nos. 6,071,742 and 6,323,024. In response to the rejection, transmitted herewith for the above-identified application are copies of Terminal Disclaimers with respect to U.S. Patent Nos. 6,071,742 and 6,323,024, respectively, disclaiming the portion of a patent granted on the present application which would extend beyond the term of either of U.S. Patent Nos. 6,071,742 and 6,323,024. The instant application, like each of the aforementioned two patents, is assigned to the Board of Regents of the University of Nebraska.

Responding next to the issues raised under 35 U.S.C. §103(a) and 35 U.S.C. §102(f)/(g), Applicants state that U.S. Patent Nos. 6,071,742 and 6,323,024 and the invention to which the present application is directed were commonly owned at the time the invention in the present application was made.

It is believed that, with the foregoing statements and the filing of the Terminal Disclaimers, the rejections under the judicially-created doctrine of obviousness-type double patenting, as well as the issue of common ownership with respect to a rejection under 35 U.S.C. §103(c), should be overcome. Withdrawal of those rejections is therefore requested.

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The claims as amended are definite:

Claims 21 and 22 stand rejected under 35 U.S.C. §112, second paragraph, as allegedly indefinite for lack of antecedent basis of the term "the transcription regulatory region" in claim 21. Claim 21 has been amended to depend from claim 20 instead of claim 19. Claim 20 provides antecedent basis for the term "the transcription regulatory region." Accordingly the rejection of claims 21 and 22 for indefiniteness is no longer applicable, and should be withdrawn.

Conclusion:

In view of the amendments and documents submitted herewith and the foregoing remarks, the presently pending claims are believed to be in condition for allowance. Applicants respectfully request early and favorable reconsideration and withdrawal of the rejections set forth in the December 19, 2003 Official Action, and allowance of this application.

Respectfully submitted,



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